

## ADMINISTRATIVE RULES

### Fiscal Estimate & Economic Impact Analysis

<b>1. Type of Estimate and Analysis</b> <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	<b>2. Date</b> 8/30/21 - DRAFT								
<b>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)</b> NR 107 – Aquatic Plant Management NR 109 – Aquatic Plants: Introduction, Manual Removal and Mechanical Control Regulations NR 193 – Surface Water Grant Program									
<b>4. Subject</b> Aquatic plant management, manual removal and mechanical control regulations, aquatic habitat protection, and surface water grants. WY-29-19									
<b>5. Fund Sources Affected</b> <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input checked="" type="checkbox"/> SEG <input type="checkbox"/> SEG-S	<b>6. Chapter 20, Stats. Appropriations Affected</b> 42900								
<b>7. Fiscal Effect of Implementing the Rule</b> <table style="width: 100%;"><tr><td><input type="checkbox"/> No Fiscal Effect</td><td><input checked="" type="checkbox"/> Increase Existing Revenues</td><td><input type="checkbox"/> Increase Costs</td><td><input type="checkbox"/> Decrease Costs</td></tr><tr><td><input type="checkbox"/> Indeterminate</td><td><input type="checkbox"/> Decrease Existing Revenues</td><td colspan="2"><input type="checkbox"/> Could Absorb Within Agency's Budget</td></tr></table>		<input type="checkbox"/> No Fiscal Effect	<input checked="" type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs	<input type="checkbox"/> Decrease Costs	<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Could Absorb Within Agency's Budget	
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<b>8. The Rule Will Impact the Following (Check All That Apply)</b> <table style="width: 100%;"><tr><td><input type="checkbox"/> State's Economy</td><td><input checked="" type="checkbox"/> Specific Businesses/Sectors</td></tr><tr><td><input checked="" type="checkbox"/> Local Government Units</td><td><input type="checkbox"/> Public Utility Rate Payers</td></tr><tr><td colspan="2"><input checked="" type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b></td></tr></table>		<input type="checkbox"/> State's Economy	<input checked="" type="checkbox"/> Specific Businesses/Sectors	<input checked="" type="checkbox"/> Local Government Units	<input type="checkbox"/> Public Utility Rate Payers	<input checked="" type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b>			
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<b>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1).</b> \$779,173 over the first 5 years.									
<b>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No									
<b>11. Policy Problem Addressed by the Rule</b> The current program processes and requirements are based on an outdated administrative rule that does not incorporate the emergence of the internet, modern technologies, new scientific understandings, and changes in urban development. This creates inefficiencies of process and policy implementation that affect all stakeholders.  The objective of the proposed rule is to bring the policies of the state's aquatic plant management (APM) program into alignment with current state and federal law, modern technology, the scientific understanding of the control of aquatic invasive and nuisance-causing species, as well as the protection of native aquatic plants, aquatic habitats, water quality and public health.									
<b>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.</b>  None of the activities regulated under ch. NR 107, Wis. Adm. Code, are state mandated activities. However, private professional service contractors and consultants, individual riparian owners, lake organizations including lake districts and associations, and other stakeholders seeking to control aquatic plants in state waters will be affected by the proposed rule. These stakeholders were represented in an "APM Study Group" that examined the aspects of APM in Wisconsin and reviewed the APM Strategic Analysis and the scope statement for rule development. The department held public meetings on the policy proposals for rule development to consider stakeholder's comments during rule drafting. The department will contact these entities during the economic impact analysis (EIA) comment period via email. Other entities that may have interest in this rule, including, Wisconsin Lakes, Wisconsin Wetland Association, Wisconsin Manufacturers and Commerce, Great Lakes Indian Fish and Wildlife Committee, Midwest Aquatic Plant Management Society, and The Nature Conservancy, will be contacted during the EIA solicitation period process for comments.									

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13. Identify the Local Governmental Units that Participated in the Development of this EIA.

There are currently 240 lake districts in Wisconsin. The department will solicit information from these groups via email during the solicitation and comment period process of the draft EIA.

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14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

None of the activities regulated under the proposed rule are state mandated activities. The types, number, and acreages of permits vary on an annual basis. The estimated impacts below are based on historical permit and treatment record data, cost analysis from the Surface Water Grant program, and standard hourly rates. In the *Strategic Analysis of Aquatic Plant Management in Wisconsin*, Wisconsin DNR, 2019, the department estimated that \$9.4 million is spent each year on APM in Wisconsin. Of that, approximately half is spent by lake associations and districts, non-governmental organizations and municipalities. The remainder is spent by the department through grants and land management.

(A) Economic Impact on Businesses:

The cost of compliance with proposed ch. NR 107, Wis. Adm. Code, is not directly placed on businesses. The department expects a net positive gain for business as a result of the proposed rule. In 2020, 77 businesses provided aquatic plant management services in the state.

(B) Economic Impacts on Local Governments, Utility Rate Payers and Public Entities:

Planning Cost:

In the proposed rule, the department proposes the creation of a management plan for the majority of control activities in the state once every 5 years. Additionally, the department is creating planning templates for permit applicants to reduce variability in plans and minimize the time and effort needed to create a management plan. The templates will be designed for non-professionals who could conduct most of the planning themselves without hiring a consultant, though many communities may choose to hire outside help, often with the assistance of state grant dollars.

The department estimates 400-450 waterbodies will be required to create new management plans. However, approximately 250-280 of those waterbodies have existing management plans that may not need to be updated upon rule promulgation. Approximately 150-200 waterbodies will need plans at the outset of rule implementation. For those waterbodies, the estimated cost will be:

	Monitoring	Analysis and Drafting	Notification	Total Cost for All Plans
Planning Costs	Median \$2,908 baseline point-intercept lake survey, \$1,000 wetland survey.	\$100-400	\$30 newspaper ad, \$20 administrative costs	\$396,546-\$444,246

The costs enumerated in the table above would recur every 5 years.

All associated costs for monitoring were created assuming similar numbers and types of permits will be submitted to the department as submitted in the past 2 to 3 years.

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#### Monitoring Costs for Large Scale Chemical Control on Non-Private Waters:

Roughly 465 chemical control permits in lakes, rivers and streams are issued annually. Approximately 7-10% of those permits may have large scale effects under the proposed rule. The cost increase to conduct proposed monitoring associated with these activities is expected to be a median of \$2,908 prior to a large scale control effort, and \$2,908 again the following growing season after control, which equals \$5,816 over 2 to 3 years. Totaling \$189,310 – \$ 270,444 over 2 to 3 years, across approximately 45-50 waterbodies. The cost is phased in over 2 to 3 years, totaling \$258,796 over 50 waterbodies.

#### Monitoring Costs for Large Scale Mechanical Control on Non-Private Waters:

Roughly 220 mechanical control operations are active in the state. Of those, approximately 5% are expected to have large scale effects under the proposed rule. The cost increase to conduct proposed monitoring associated with these activities is expected to be a median of \$2,908 prior to a large scale control effort, and \$2,908 again the following growing season after control, which equals \$5,816 over 2 to 3 years. This cost would be phased in over 2 to 3 years, totaling \$49,082 over 11 waterbodies.

#### Monitoring Costs for Large Scale Control of Wetlands:

The department estimates 100 wetland control permits will be submitted under the proposed rule. Of those, 30-35% report acreages that are expected to have large scale effects under the proposed rule. The median reported acreage was 3.26 acres, however, due to the variability in species distribution, only a portion of the 3.26 acres may be where control actually occurred. The department expects the associated monitoring could be accomplished in one half to one day in most situations, at approximately \$550 per day or totaling \$8,250 – 19,250.

#### Permit Fees:

<b>Proposed Fee Structure</b>	<b>Fees capped to \$2,500</b>	
	<b>Year 1</b>	<b>Years 2-5</b>
Chemical Waters < 10 acres	\$50 base plus \$30 annual fee	\$30/ year
Chemical Lakes, Rivers, Streams	\$75 base plus \$50/acre round up	\$75 base plus \$50/acre round up
Wetlands	\$75 base plus \$50/acre round up	One-half Year 1 fee but not less than \$75
Mechanical Lakes, Rivers and Streams	\$75 base plus \$50/acre round up	One-half Year 1 fee but not less than \$75
Mosquito	\$75 base	\$75 base

The cost estimates in the “Permit Fee” table above were created using 2020 permit data. Permits in subsequent years may not have the same acreage amounts, or the same number of permits, which would impact the total fee. However, the department ran a scenario of one year’s permit data continued to approximate fee increases over a 5-year period if the same number of permits with the same acreages were submitted.

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#### Permit Fee Example:

Permit Type	Revenue 2020	Proposed Rule - Revenue 1st Year	Proposed Rule - Revenue Years 2 - 5
Chemical Over or Equal to 10 acres	\$113,840	\$225,460	\$202,473
Chemical Under 10 acres	\$24,495	\$103,240	\$43,840
Mechanical NR 109	\$21,120	\$98,350	\$50,062
<b>Total</b>	<b>\$159,455</b>	<b>\$427,050</b>	<b>\$296,375</b>

#### Surface Water Grants:

The Surface Water Grant program provides 66% cost-sharing for the development of aquatic plant and aquatic invasive species management plans. The department intends to assure a significant portion of the planning funds are available each year for APM planning, which could significantly subsidize the overall cost of compliance statewide. Grants are also available to control aquatic invasive plants. APM permit fees are a reimbursable expense for an applicant that has also received a surface water grant for implementation. From 2016-2020, the state funded nearly \$4 million annually on AIS projects. Within that \$4 million, over \$1 million was allocated to AIS planning and \$1 million was allocated for control of AIS each year.

#### Waivers:

- The department estimates 40 existing private pond permits will be waived from permitting requirements under the proposed rule. This will reduce permit fee costs by \$1,600 annually, totaling \$8,000 over the 5-year permit, and an additional \$760 reduction in administrative costs.
- The department estimates 40-70 permits will be waived from permit requirements under proposed rule for: cut stump control of woody vegetation, hand wicking of invasive emergent vegetation, manual removal of woody vegetation below the ordinary high water mark (OHWM) in outlying waters, control of emergent vegetation along stormwater ponds, chemical control of emergent vegetation in winter conditions, manual/mechanical removal of woody vegetation above OHWM, and burning. This will reduce permit fee costs by anywhere from \$5,000 - \$10,000 in the first year and \$5,000 - \$7,000 in years 2 through 5.

#### Increased Permit Issuance Timelines:

- A 5-year permit for ponds will save \$109,600 in administrative costs over 4 years.
- A 5-year permit for wetlands and mechanical control with a plan will save \$21,520 in administrative costs over 4 years.

#### Public Notification Requirements:

The proposed rule places the responsibility of public notification on the department. This will reduce costs for applicants by \$22,500 a year.

#### (C) State Economy:

The department does not anticipate negative impacts to the state's economy.

#### (D) Fiscal Impacts:

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APM Permitting: Permit revenue for fiscal years 2018, 2019, and 2020 averaged approximately \$158,000 a year. In FY20 it was \$159,455 which will be used as a baseline for this analysis. These revenues (appropriation 42900) are used to fund one 0.5 project position to staff central permit intake (CI) and four limited term staff (LTE) to process permits in field offices under the oversight of a biologist and supervisor. Hours charged by the biologist and supervisors (FTE) or other LTEs is charged to other appropriations, including Lake SEG (Water Resources Account), GPR or federal Clean Water Act S. 106 funds.

Total expenditures for staff and related expenses for administering the APM program amounted to \$475,836 in FY19 and \$582,720 in FY20. These figures do not account for time staff may spend on education and outreach about aquatic plants and invasive species. Using FY20 numbers, subtracting permit fee revenue from expenditures shows that APM permitting is “subsidized” by about \$423,264 a year. Put another way, permit fees currently only cover about 27% of the program costs.

The higher fees proposed in the rule are estimated to generate \$268,991 per year. The “subsidy” drops to \$313,729 covering about 53% of program costs assuming staff workload does not appreciably increase. The cost increase would allow 3.5 additional LTE or one dedicated FTE and one LTE.

Workload would almost certainly increase in the first year or two due to the increase in assistance needed to advise on and review plans. After an initial wave of planning, workload should taper off into a more predictable rhythm. After that other administrative efficiencies in the rule should offset any increases over the long term.

Surface Water Grants: Permittees who need to develop plans under the proposed rule will seek cost-sharing through Surface Water Grants (SWG). This will lead to increased demand and consequently competition among applicants for limited funds. This shouldn’t significantly increase costs to the department, because staff will be administering the same amount of money and the same relative number of applications each grant cycle. The use of standardized planning tools (templates) should streamline application review. However, a greater portion of the available funds will go toward aquatic plant management plans as opposed to other surface water planning needs, which may increase customer dissatisfaction or impede or delay other types of surface water planning projects.

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#### 15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The new rule will streamline the permitting process by eliminating redundancies. The use of electronic filing and notice will be incorporated to further enhance efficiencies for the applicant, industry and the department. It will address concerns from citizen, industry, academia and other governmental units over program consistency, qualification of professionals, planning and standard methodologies for project assessment. The recreated rule will update citations, references, and notes to appropriate statutes and administrative codes and include other housekeeping changes.

Alternatively, if updates to the aquatic plant management rules are not made, waterbodies will continue to be managed with outdated methods leading to reduced efficacy of management. Customers and the commercial applicator industry will continue to be frustrated by adherence to outdated methods and annual permitting for over a thousand private ponds.

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#### 16. Long Range Implications of Implementing the Rule

The long-range implication will be the same as the short-range implication of this rule.

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#### 17. Compare With Approaches Being Used by Federal Government

Not applicable. The federal government does not regulate the management of aquatic plants.

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#### 18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

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#### **Michigan**

The Michigan Department of Environment, Great Lakes, and Energy (EGLE) issues permits for aquatic plant management (APM) using pesticides. Special permit conditions are implemented when chemical treatment may negatively impact threatened or endangered species or result in a public health hazard. Permit application fees vary between \$75-\$1,500 depending on the acreage proposed for treatment. Michigan EGLE staff may limit the size of treatments for native control projects. A permit is generally not required for mechanical harvesting or manual cutting. Other physical APM activities such as hand-pulling, diver assisted suction harvesting (DASH), benthic mats, weed rollers, and dredging require a permit from Michigan EGLE.

Applicants may also choose to apply for a Certificate of Coverage (COC) under a General Permit (GP) in place of an individual or standard permit for chemical control. Aquatic nuisance control activities covered under a COC must be determined by EGLE to not negatively impact human health and have no more than minimal short-term adverse impact on the natural resources or environment. The GPs for ponds and Great Lakes canals and marinas in Michigan have pre-qualified waterbody lists.

Permits for chemical control typically require the permittee to notify waterfront owners within 100 feet of the area of impact 7-45 days before the initial treatment of the season. The notification must be in writing and must include permittee contact information, the list of pesticides and corresponding water use restrictions, and approximate treatment dates. Signs must be posted the day of treatment along the shoreline of treatment areas.

Whole lake chemical treatment must have a Lake Management plan (LMP). The LMP must include the physical and biological characteristics of the waterbody, management goals, history of waterbody management, water quality information, vegetation management plan, description of nuisance conditions, and planned monitoring and evaluation.

#### **Minnesota**

Minnesota DNR requires an Invasive Aquatic Plant Management (IAPM) permit for the management of invasive plants that involves either mechanical removal of plants or application of herbicides to public waters. In order to receive an IAPM permit, target invasive aquatic plants must be found in the proposed treatment area and the treatment method must be selective for the target plants. Additionally, the treatment must minimize potential negative impacts to aquatic habitat and water quality. A permit must also include a justification such as providing riparian access, enhancing recreational use, controlling invasive aquatic plants, managing water levels, or protecting habitat.

A permit is also required for APM activities below the ordinary high-water mark. This includes mechanical and pesticide control of nuisance aquatic plants, transplanting aquatic plants into public waters, relocating or removing bogs, and installing or operating an automatic aquatic plant control device. Permits may be issued to property owners, lake organizations, or local governments. Herbicide control cannot exceed 15% of the littoral area. Mechanical control (or a combination of mechanical and herbicide) cannot exceed 50% of the littoral area. However, a variance can be filed to allow a larger percentage of littoral area to be controlled.

A map of the treatment site and the signatures of affected landowners are required for chemical control permits. Prior to permit issuance, a DNR field inspection is required (but may be waived by the local invasive species specialist). Delineation surveys should be conducted on a seasonal basis for permitted activities. Permit conditions may include limits on the amount of control, restrictions on the methods and timing of control, restrictions on the target species, requirements for supervision of the control, and public notification requirements.

#### **Illinois**

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Illinois DNR requires any person, company, or organization that wishes to conduct aquatic plant control (chemical or non-chemical) in the Fox Chain O'Lakes to obtain a Letter of Permission (LOP). To obtain an LOP, a completed application and map of treatment area is needed. Individual property owners with a titled portion to the bottom of the waterbody do not need an LOP if they plan to treat 0.25 acres or less. An LOP is not needed for waterbodies outside the Fox Chain O'Lakes.

For waterbodies outside of the Fox Chain O'Lakes, herbicides may be applied by property owners that own a portion of the lake bottom. Property owners must also ensure herbicides do not affect neighboring portions. For a whole lake treatment, permission of all bottom owners is required. Property owners may apply their own herbicide if it is categorized as a General Use pesticide. Restricted Use pesticides must be applied by a person with a pesticide license.

Illinois EPA has a National Pollutant Discharge Elimination System (NPDES) general permit for pesticides that are applied to, over, or near Illinois waters. Private water owners with waters that discharge to waters of the state are covered under this permit. To be covered under the general permit, private water owners must submit a Notice of Intent (NOI) 14 days prior to pesticide application. There is an annual threshold level of 80 acres. If the annual threshold is exceeded, a Pesticide Discharge Management Plan (PDMP) is required in addition to the NOI. As part of the NOI, the pond owner must contact the Illinois DNR to check for threatened and endangered species in the treatment area. If the waterbody is an artificial impoundment less than 10 acres, it is exempt from the threatened and endangered species consultation. Private waterbodies that do not discharge to state waters do not need an NPDES permit for chemical treatment of aquatic plants.

#### **Iowa**

Iowa DNR requires permits for the introduction and removal of aquatic plants in public waters. These permits may be issued for 1-5 years. For physical removal permits, plants must be removed by hand-cutting, hand-pulling, hand-raking, or mechanical cutting only. Plants should only be removed to establish a travel lane and all removed plant material must be left in place or collected and composted on the same land owned or used by the permittee.

Permits are also required for cities and counties to use chemical control of aquatic vegetation in water intake structures. For all public waters and some private waters, a permit is required for chemical control of aquatic plants. For chemical control permits, the permittee must have written permission of impacted littoral and riparian landowners. For class C waters, permittees must submit an "Aquatic Pesticide Application to Prohibited Waters" permit application about one month prior to treatment. For Outstanding Iowa Waters (OIW), permittees must apply for an individual NPDES permit. There is no application form, so permittees must send a letter indicating their intent to apply. If a lake is not a class C or OIW, herbicide can be applied by a certified applicator without a specific permit under a general permit. For all lakes regardless of classification, records must be kept, and best management practices followed.

A dock owner may remove aquatic vegetation without a permit if the aquatic vegetation creates a hazardous or detrimental condition in the boating area around the dock or covers a minimum of 75 percent of the boating area around the dock. A dock permittee is limited to the removal of vegetation in a 20-foot radius around the dock, removal of a hazardous condition, or creation of a 15-foot-wide boating pathway. Removal method is limited to hand-cutting, hand-pulling, hand-raking or mechanical cutting devices, excluding automated plant control devices that disturb the bottom substrate.

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19. Contact Name

Madi Johansen

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20. Contact Phone Number

608-712-2798

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This document can be made available in alternate formats to individuals with disabilities upon request.

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

### ATTACHMENT A

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule provides a net benefit to small business impacted by the rule. The proposed planning and evaluation components are likely to increase opportunities for business growth in the state.

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

The department reviewed a list of known private service consultants and contractors for aquatic plant management activities in the state and estimated the number that were likely to meet the definition of a small business, based on staff knowledge of the businesses. The department used a list of all permits from 2019 and 2020 to determine how many permits individual businesses submit as agents of the permit applicant.

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- ☒ Less Stringent Compliance or Reporting Requirements
- ☒ Less Stringent Schedules or Deadlines for Compliance or Reporting
- ☒ Consolidation or Simplification of Reporting Requirements
- ☐ Establishment of performance standards in lieu of Design or Operational Standards
- ☒ Exemption of Small Businesses from some or all requirements
- ☐ Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

The proposed rule reduces the compliance requirements for small businesses by incorporating less stringent compliance or reporting requirements, less stringent schedules or deadlines for compliance or reporting, and consolidation or simplification of reporting requirements in multiple ways.

- Incorporating fewer permitting and reporting requirements.
  - For small waterbodies under 10 acres, approximately 1,200 permits, moving from an annual permit to a 5-year permit and reducing permit form requirements.
- For waterbodies requiring public notification, the department is taking the responsibility of creating a public notification system and posting the intent to submit a permit.
  - Agents of the applicant (small businesses) will no longer need to submit newspaper notification for large scale treatments.
- Incorporating fewer permitting and reporting requirements for wetland management:
  - Waiving permit requirements for several control activities entirely.
  - Moving from an annual permit to a 5-year permit with an approved plan.
  - Lumping reporting requirements to a monthly basis instead of after every control event.
- Fewer permitting requirements for mechanical management:
  - Moving from a 3-5-year permit with a plan to a 5-year permit with an approved plan.
- Moving from no allowed permit amendments to incorporating permit amendment options in some instances after the permit has been approved.
- Incorporating multiple options for public or riparian notification for planning and permitting to allow flexibility.

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5. Describe the Rule's Enforcement Provisions



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The department follows the enforcement procedures in ss. 23.24 (6), 23.50, and 281.98, Stats.

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

☐ Yes ☒ No

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